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09/629,171	07/31/2000	Michael J. Matsko	8611	4793

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PAUL W. MARTIN  
LAW DEPARTMENT, WHQ-5E  
1700 S. PATTERSON BLVD.  
DAYTON, OH 45479-0001

EXAMINER

SHAFFER, ERIC T

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 12/10/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/629,171

Applicant(s)

MATSKO ET AL.

Examiner

Eric T. Shaffer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. This communication is in response to the amendments filed October 3, 2003.

***Summary of Instant Office Action***

2. Applicant's arguments, filed November October 3, 2003, concerning claims 1 – 20 in the Office Action mailed June 11, 2003, have been considered, deemed unpersuasive and are maintained.
3. None of the claims have been cancelled and no claims have been added. None of the rejections have been removed and only the claim objection has been removed.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 – 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Frey et al (US 5,557,513).

As per claims 1, 13 and 19, Frey et al discloses a computer implemented method of associating a retail performance metric record with an event causing the retail performance metric, the retail performance metric record being a function of the retail performance metric type and the time elapsed waiting for and receiving an input, comprising the steps of:

receiving an input indicative of an event occurring at a point of sale during a transaction

(column 5, line 66 – column 6, lines 2, “data from the store’s POS system representing the time and event of each buyer that checks out through a checkout lane during the same time interval”);

recording an entry record indicative of the input received at the POS station during the transaction (column 6, lines 2 - 4, “the POS system registers each transaction at the checkout ”),

recording a retail performance metric record, the retail performance metric record being a function of the retail performance metric type and the time elapsed waiting for and receiving an input (column 8, lines 37 - 39, “recording the wait time per shopper, the line length, and the cashier idle time”) and (column 8, lines 21 – 23, “a shopper checkout time, the time period it takes to check out once the shopper reaches the cashier”).

associating the retail performance metric record with the entry record (column 4, lines 59 – 61, “the system determines whether a particular person entering the store is a potential buyer as opposed, for example, to a small child”).

repeating the steps of receiving, recording the entry record, recording the retail performance metric record, and associating for a plurality of events during the transaction (column 6, line 2 – 3, “the POS system registers each transaction at the checkout”), where each transaction indicates repeating the steps until there are no more transactions.

Frey et al does not explicitly disclose the feature of determining the time type category of the input received. However, this feature is deemed to be inherent to the Frey et al system, in order to differentiate the estimated shopping time in line 44 - 45, column 3 from the time of the transaction in line 3 in column 6. The Frey et al invention would be inoperative if some typing means was not available to distinguish between the two types of time.

6. As per claims 2, 3, 8 and 9 Frey et al does not specifically disclose the system wherein the memory further includes sequences of instructions which, when executed by the processor, cause the processor to include an entry identifier field in the entry record and to associate the retail performance metric record with the entry record by including the identification field value of the entry record in the retail performance metric record. However, this feature is deemed to be inherent to the Frey et al device as lines 2 - 3, column 6 show “the POS system registers each transaction at the checkout and records the time of the transaction”. Since each register can only service one customer at a given time, and since each transaction is registered and recorded, the combination of register and time serves as a unique entry identifier field for the given transaction, while the recording of each transaction represents the performance metric.

7. As per claims 4, 10, 14 and 17, Frey et al does not explicitly disclose the sequence of processor executed instructions and the associating step comprises adding a pointer to the retail performance metric record, wherein the pointer references the entry record. However, this feature is deemed to be inherent to the Frey et al device as lines 2 – 3 of column 5 show pointers in use in the system that “allows the computer to retrieve the shopper entry time data from the recognition system”. Pointers are, by definition, memory addresses that indicate where data, such as entry time data, are stored within the system. If these addresses did not exist, the data retrieval functionality of the Frey et al device would be inoperative.

8. As per claims 5, 11, 15 and 18, Frey et al does not explicitly disclose the method and system wherein the memory further includes sequences of instructions which, when executed by the processor, cause the processor to associate the step comprises adding a link to the retail performance metric record, wherein the link references the entry record. However, this feature is

deemed to be inherent to the Frey et al device as lines 2 – 3 of column 5 show links in use in the system that “allows the computer to retrieve the shopper entry time data from the recognition system”. Links are, by definition, are references or pointers to data in another record memory location. If these links did not exist, the data retrieval functionality of the Frey et al device would be inoperative.

9. As per claims 6 and 12, Frey et al discloses the method and system wherein the entry record after addition of the retail performance metric record comprises an entry identifier field, an entry type field, a time of entry field, and an elapsed time field (column 3, lines 44 – 47, “The software of the present invention combines the shopper entry data, items purchased and estimated shopping times, and exit time data”).

10. As per claims 7, 16 and 20, Frey et al discloses a computer implemented system for associating a retail performance metric record with an entry causing the retail performance metric, the retail performance metric record being a function of the retail performance metric type and the time elapsed waiting for and receiving the input, comprising:

a processor for receiving and transmitting data (column 4, lines 53 – 55, “signals are transmitted to a signal processor, and from there to a central processing unit which processes the signals and generates data”);

a memory coupled to the processor (column 4, lines 53 – 55, “signals are transmitted to a signal processor, and from there to a central processing unit which processes the signals and generates data”), the memory having stored therein sequences of instructions which, when executed by the processor, cause the processor to receive input indicative of an event occurring at a point of sale station during a transaction (column 6, lines 2 - 4, “the POS system registers

each transaction at the checkout”), record an entry record indicative of the input received, at the POS station during the transaction, determine the time type category of the input received, (column 5, line 66 – column 6, lines 2, “data from the store’s POS system representing the time and event of each buyer that checks out through a checkout lane during the same time interval”), record a retail performance metric record the retail performance metric record being a function of the retail performance metric type (column 8, lines 25 - 28, “the store POS system which records the checkout transactions”), the time type category and the time elapsed waiting for and receiving the input (“includes data representing the duration of these transactions”, column 8, lines 27 - 28), associate the retail performance metric record with the time type category and the entry record, and repeat the steps of receiving, recording the entry record, recording the retail performance metric record (column 5, lines 21 - 22, “it is a real time processing loop which is called one time every minute that the program operates”), and associating for a plurality of events during the transaction (column 6, lines 2 – 6, “the POS system registers each transaction at the checkout and records the time of the transaction. A "transaction" is represented by a single buyer checking out through a checkout lane”).

### ***Response to Amendments***

11. Applicant’s arguments filed October 1, 2003 have been considered and deemed unpersuasive.

Applicant argues that the art cited by the examiner does not teach techniques for storing an entry record indicative of an input event. However, the art cited does teach the POS system registering each transaction. Applicant does not specifically narrow in the claim language a

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definition of what constitutes an input event. No mention is made in the claims as to whether an input event is a person passing through a POS line, which is taught by Frey, a person making a purchase of items, or if each individual item purchased constitutes a separate and unique input event.

Applicant argues that the art cited by the examiner does not teach techniques for storing a retail performance metric. However, the art cited does teach the POS system registering each transaction, where a number of customers passing through a POS system is a performance metric. Applicant does not specifically narrow in the claim language a definition of what constitutes a retail performance metric. Performance could constitute the number of patrons that come into the store, which is taught by Frey, or it could be interpreted to mean the number of people who engage in POS transactions, which Frey also teaches, or it could be the number of individual items scanned. The applicant does not claim in sufficient detail what is meant by a performance metric, nor does he give how such a metric is tabulated, calculated or in any other way derived.



***Conclusion***

12. THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of final action.

13. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Eric Shaffer whose telephone number is (703) 305-5283. The Examiner can normally be reached on Monday-Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax number for the organization is (703) 305-0040/308-6306

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 305-3900.

Eric Shaffer

December 5, 2003

*Susanna Diaz*  
*Susanna Diaz*  
*Primary Examiner*  
*A.U. 3623*